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and personal property whatsoever, in the place or building, or within any yard or enclosure where such articles . . . shall be found."

It will be observed that, although it was not proved by the testimony in the last case, Sherman or Young were interested in, or knew of the existence of the still, except from surrounding circumstances, the court held the personal property in the buildings, which included horses, carriages, harness, &c., in the stable belonging to Sherman, and the property in the junk-shop belonging to Young, were forfeited. In other words, the juxtaposition and the suspicious circumstances of the property proceeded against within the adjoining buildings to the still, were sufficient to forfeit it. No doubt appears to have been suggested as to the propriety of extending the forfeiture to goods not in their nature adapted to the unlawful manufacture, and the attention of the court was directed chiefly, if not entirely, to the extent of *space* covered by the words "*in the place or building, or within any yard or enclosure,*" &c. The expression of the act "all . . . personal

property whatsoever," taken literally, would certainly include the horses in the livery stable as well as the property in the junk-shop, but the court would seem to have given a very liberal construction to so severe and penal an act, in holding that the stable and shop, under the circumstances, were included "in the place or building, or within the yard or enclosure." On the other hand, the District Court in Massachusetts, by taking the words "all personal property" as merely *in pari materia* with tools and implements capable of being used in the illegal manufacture, has essentially reduced the severity of the act, and perhaps in practice may be found to have materially impaired its efficiency. The different points to which the attention of the two courts was directed may fairly account for the difference of construction, but the section itself is too important, and the interests involved too large, to be long without an authoritative exposition, and we presume a case will shortly find its way to the Supreme Court, the ultimate tribunal to set the matter at rest.

J. F. B.

District Court of the United States, Northern District of Georgia.

MATTER OF JONATHAN J. MILNER, A BANKRUPT.

A promissory note, the consideration of which was a loan of Confederate money, is not provable as a claim in bankruptcy against the maker.

Per **ERSKINE, J.** : Confederate treasury notes were not bills of credit within the prohibition of the Constitution of the United States ; but were illegal, because issued by a pretended and revolutionary government set up within the limits of the United States.

IN 1863 John Neal loaned \$2500, in "Confederate treasury notes," to Milner, the bankrupt, for which amount he made his promissory note to Neal. Subsequently, Neal gave this note to his son-in-law in trust for minor children of his daughter.

The trustee sought to prove this claim against the estate of the bankrupt. Counsel for the latter objected: First, because the consideration for the contract was Confederate treasury notes; secondly, because these notes were borrowed for the purpose of hiring a substitute to serve in the Confederate army, with the knowledge of Neal; and that the notes were so appropriated, and the substitute hired therewith did go into the said army.

Evidence being heard on these points, the register rejected the claim, and the proceedings were certified to the court. The conclusion at which the register arrived was approved by the court, but, on petition, a rehearing was had before the register on the ground that the evidence did not warrant the conclusion that Neal knew the purpose for which the money was borrowed. The register, however, adhered to his former opinion, and it was again certified to the court.

ERSKINE, J.—From the views which I entertain of the legal principles involved in this proceeding, it is not essential to an approval or disapproval of the conclusion at which the register arrived, that these Confederate treasury notes, or any portion of them, were used to procure a substitute to serve in the Confederate army, or that they were employed for any other purpose. The register holds, as he held at first, that the contract was illegal and void; and this result I approve and affirm. But I do not concur with him in one of the principal reasons advanced for his decision; and which reason is more prominently argued in his first written opinion than in his last, namely, that these notes were bills of credit within the sense of that term, as understood in the Constitution. He said: “Art. 1, sec. 10, clause 1, of the Constitution declares, among other things, that ‘no state shall enter into any confederation,’ or ‘emit bills of credit.’ It follows, then, that the confederation styled the Southern Confederacy, was entered into by the several states of which it was composed, in direct violation of an express provision of the supreme law of the land. As no state can constitutionally ‘emit bills of credit,’ it follows, as a matter of course, that no confederation of states can do so without bidding defiance to the Constitution. The issuance of Confederate treasury notes was not only an illegal act within itself, but was doubly illegal, having been done by an illegal confederation.”

“No state shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit,” &c. : Const. U. S. Art. 1, Sec. 10, p. 1.

No disquisition on the origin of bills of credit, or history of their rise and progress, or of their fall, under the inhibition just cited, would aid in the determination of this case. Therefore I will but remark, that the great minds who framed the Constitution were, from recent experience, aware of the blighting effect on the domestic and foreign commerce of the states, and on the welfare of the whole country, which flowed from the almost indiscriminate issuing of these bills by the colonies, and afterwards by the states, as a circulating medium or as money among the people, to suffer its perpetuation, or to longer tolerate it to the states—and time has proven the wisdom of their statesmanship.

So far as I have been able to ascertain, all paper answering to bills of credit put forth during the war of Independence, were promises to pay. But, be this so or not, the Supreme Court of the United States, in *Craig et al. v. The State of Missouri*, 4 Peters 410, held, that a paper currency emitted by a state, and receivable in discharge of all debts and taxes due the state, and of all salaries and fees of office, &c., &c.—and pledging the faith and funds of the state for the redemption of these paper issues—was within the constitutional prohibition.

The same court, in *Briscoe v. The Bank of the Commonwealth of Kentucky*, 11 Peters 258, gave the following comprehensive definition of a bill of credit: “The definition, then, which does include *all* classes of bills of credit emitted by the colonies, or states, is a paper issued by the sovereign power, containing a pledge of its faith, and designed to circulate as money.”

Taking this definition as imparted by the highest judicial tribunal in the land, it will conduct to a correct conclusion the endeavor to ascertain whether these treasury notes or bills, issued by the so-called Confederate States, fall within it.

Although it is declared that no state shall emit bills of credit ; yet if two or more of the states ally themselves or confederate together, and on their faith and credit issue these bills, I apprehend, the inhibition would apply with a force equally as direct and controlling against the allied or confederated states as against a single one.

Here is a copy of one of these treasury notes :—

“Fundable in eight per cent. stock or bonds of the Confederate States. Six months after the ratification of a treaty of peace between the Confederate States and the United States, the Confederate States of America will pay five dollars to bearer. Richmond, September 2d 1861.

“Receivable in payment of all dues, except export duties.”

Then follow the names of a register and treasurer.

One decision—and only one—on this subject has been brought to my notice; that is the case of *Bank of Tennessee v. Union Bank of Louisiana*, lately tried before Judge DURELL, and a jury, in the Circuit Court of the United States for the Eastern District of Louisiana, and published in the *American Law Review* for January, 1868. The judge is there reported to have said, in his charge to the jury, “that confederate treasury notes issued by said government, and circulated as money, were bills of credit within the meaning of the Constitution; and therefore an unlawful issue.” The views which present themselves to my mind do not terminate in accord with the opinion expressed by that learned and able judge.

During the years 1860 and 1861, South Carolina, Georgia, and other states, by similar modes, called on the people to send delegates to meet in convention. Accordingly, these conventions assembled, and each passed an ordinance of secession, as it is generally termed, by which ceremony, these conventions severally adventured to withdraw the states from the Federal Union, and to release the people from their subjection to the laws of the land, and their allegiance to the Nation. The constitutional state governments were overthrown, and superseded by spurious and revolutionary governments. The setting up of a pretended central or general government styled “The Confederate States of America” followed; and, soon thereafter, open rebellion, and war of portentous magnitude burst upon the nation: *Vide The Prize Cases*, 2 Black 635, and *Shorthridge v. Mason*, United States Circuit Court, District of North Carolina: 2 Am. Law Review 95.

In the seceded states (so called) the sovereign authority being for the time displaced, consequently, there ceased to be, within any of them, a government under the Constitution of the United States. Then, can it be said that the usurping power could pledge the faith of the state by a public law, or otherwise, for

the payment of the treasury notes issued by the so-called Confederate States of America? Or could this pretended general government bind any of those states for the redemption of these notes?

But these Confederate treasury notes or bills do not pretend to have been emitted by a state, or a combination of states of the Union; nor can it be inferred from indicia found upon them,—nor can their recondite history show—that they emanated from the sovereign power, and on the faith of any of the states. And thus it will be seen, that they did not possess the characteristic attributes of bills of credit, in accordance with the definition of the Supreme Court of the United States; they did not issue by virtue of the sovereignty of the state, nor did they rest for their currency on the faith of the state pledged by a public law: *Darlington et al. v. State Bank of Alabama*, 13 How. 12.

Notwithstanding these notes or bills were not, in my judgment, bills of credit within the prohibition contained in the tenth section of the first article of the constitution; yet they were none the less illegal; they were issued by a pretended government, organized in the name of certain states, by subjects and citizens of the United States, and who, at the very time, were in rebellion against their rightful government, and whose design and object was to “dismember and destroy it:” *The Prize Cases*.—*Shortridge v. Mason*, *supra*.

It may not be wholly unimportant to remark, that it is a well-established doctrine of the courts, that a wide distinction exists between an *executed* and an *executory* contract. In the former, they will not, as a general rule, interfere between the parties, to set the contract aside, but will leave them where they placed themselves; and this, too, notwithstanding the contract be, in part, or in whole, founded on an illegal consideration. And one owning property may—if no fraud be put upon him, and no misrepresentation or circumvention or covin enter into the transaction—alienate it—absolutely, for what currency or thing he pleases, or even give it away. But an executory contract, like this claim of Bailey, the trustee, against the assets of the bankrupt Milner, will not be enforced. The principles of law directly applicable to executory contracts, based upon illegality, were long since determined by the courts, both in England and in this country. One case only will be referred to. The doctrine, as

laid down by Mr. Justice Washington, in *Toler v. Armstrong*, 4 Wash. 296, is so succinctly announced, that it is best it be given in his own words: "I understand the rule, as now already settled, to be, that where the contract grows *immediately* out of, and is connected with an illegal or immoral act, a court of justice will not lend its aid to enforce it. And if the contract be, in part only, connected with the illegal transaction, and growing immediately out of it, though it be, in fact, a new contract, it is equally tainted by it."

If this demand of twenty-five hundred dollars were allowed, the dividends of the creditors, arising from the assets, would be diminished that amount; and this without any fault on their part, but wholly through the illegal dealings of the bankrupt and others: Bankrupt Law, sec. 22.

I may add, that the law, in allowing a guilty party to take advantage of the illegality of his own act—as is here done by the bankrupt—does so, not with a view of conferring a benefit on him, but upon grounds of public policy, and also in this case, that justice may be done to the creditors of Milner.

The decision of Mr. Register Murray is approved.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹

SUPREME COURT OF NEW YORK.²

AUCTION SALES.

Agreement not to Bid.—The rules about judicial sales which make void as against public policy, agreements that persons competent to bid at them will not bid, make void such agreements alone as are meant to prevent competition and induce a sacrifice of the property sold. An agreement to bid, the object of it being fair, is not void: *Wicker v. Hoppock*, 6 Wall.

BROKER. See *Stock*.

CHECKS.

Not an Assignment of Funds.—Checks drawn in the ordinary general

¹ From J. William Wallace, Esq.; to appear in Vol. 6 of his Reports.

² From Hon. O. L. Barbour: to appear in Vol. 49 of his Reports.